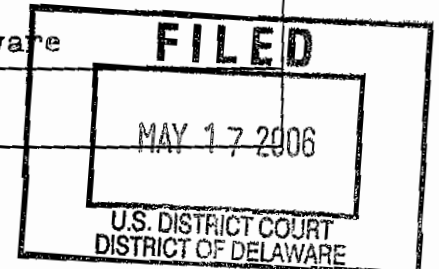


PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	District State of Delaware
Name (under which you were convicted): Manuel Nieves	Docket or Case No.:
Place of Confinement: Delaware Correctional Center	Prisoner No.: 00464723
Petitioner (include the name under which you were convicted) Respondent (authorized person having custody of petitioner) Manuel Nieves v. State of Delaware The Attorney General of the State of Delaware.	

PETITION



1. (a) Name and location of court that entered the judgment of conviction you are challenging: Superior Court New Castle County *80 scanned IFP*
- (b) Criminal docket or case number (if you know): 0107022700
2. (a) Date of the judgment of conviction (if you know): 3/1/02
- (b) Date of sentencing: 5/24/02
3. Length of sentence: 322 Year
4. In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
5. Identify all crimes of which you were convicted and sentenced in this case: Rape 1st, 2nd and unlawful Sexual contact and one charge of continuous abuse of a child.
6. (a) What was your plea? (Check one)
- (1) Not guilty ☒ (3) Nolo contendere (no contest) ☐
- (2) Guilty ☐ (4) Insanity plea ☐
- (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☒ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Supreme Court State of Delaware

(b) Docket or case number (if you know): 352,2002

(c) Result: Affirmed Conviction.

(d) Date of result (if you know): 3/14/2003

(e) Citation to the case (if you know): 352,2002

(f) Grounds raised: I. The Defendant WAS DENIED THE RIGHT TO A FAIR TRIAL BECAUSE THE TRIAL COURT EXPRESSED APPROVAL OF THE JUVENILE COMPLAINANT'S TESTIMONY AND DID NOT MAINTAIN IMPARTIALITY BEFORE THE JURY.

II. THE DEFENDANT WAS DINIED A FAIR TRIAL BECAUSE THE TRIAL COURT WOULD NOT PERMIT THE DEFENDANT TO OFFER EVIDENCE OF HIS GOOD CHARACTER.

(g) Did you seek further review by a higher state court? Yes ☐ No ☒

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Superior Court State of Delaware

(2) Docket or case number (if you know): CRID# 0107022700

(3) Date of filing (if you know): 6/8/2004

(4) Nature of the proceeding: Post Con. Relief

(5) Grounds raised: Ineffective assistance of counsel

Constitutional violation

Judicial misconduct

Inefficient evidence

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: Denied

(8) Date of result (if you know): 8/16/2004

- (b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: NO

(2) Docket or case number (if you know): N/A

(3) Date of filing (if you know): N/A

(4) Nature of the proceeding: N/A

(5) Grounds raised: N/A

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: NO

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☐ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

N/A

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: See Attached

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Was not

Raised by defence Attorney- Not sure why

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Ineffective Showing Constitutional vaolations

Name and location of the court where the motion or petition was filed: Superior
New castle

Page 7

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Supreme Court

Docket or case number (if you know): 381-2004

Date of the court's decision: 09/14/2004

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

N/A

GROUND TWO: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____

GROUND THREE: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): _____

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☐ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: _____

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.* Until April 18 2006 No

time Bar and as per

State Motion (61 petition)

page 2 was Addressed

As Constitutional Violation

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

Therefore, petitioner asks that the Court grant the following relief: REMANED
FOR NEW TRIAL.

or any other relief to which petitioner may be entitled.

PRO, SE.
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on
_____ (month, date, year).

Executed (signed) on 5/15/06 (date).

Manuel Nieves
Signature of Petitioner

*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Page 16

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. _____

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

* * * * *

In the States answer to the Supreme Court of the State of Delaware Mr McFarlan quotes Superior Court Criminal Rule 61 (i) (3) failure to raise, and argues Appellant's arguments I-V should be denied which included constitutional violations and how these violations made appellants attorney ineffective. First appellant would like to address constitutionality of ineffective assistance of counsel. Appellant understands that this [must] be addressed as an individual argument in Superior Court at which time has [not] been done so pursuant to the interest of justice under Superior Court Criminal Rule 52 (b) Delaware Rules Annotated 2005 Edition Vol. 1 we quote:

Rule 52 (b) Plain error - plain error or defects affecting substantial rights may be noticed although they were not brought to the attention of the Court." see Taylor v State 464 A2d 897, 899. Del. Sup. 1983.

Also under 28 USC 2254 it says or addresses Rule 61 (i) (5) bars of relief when it says "The bars to relief in paragraph (1), (2), and (3) of this subdivision shall [NOT] apply to a claim that the court lacked jurisdiction or to a colorable claim that undermined the

fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgement of conviction";

To address these constitutional violations we first would like to quote *Powell v Alabama* 53 Sct. 55 which language emphasizes the right to counsel is not limited to trial; it is recognized "at every stage of proceedings" It applies at 'critical' stages of a criminal justice process where the results might well settle the accused fate and reduce the trial to a mere formality" see *Moulton* 474 US @ 170 (quoting *U.S. v Wade*

875 Sct. 1926) also in *Moulton* it says statements taken in violation of the right to counsel are inadmissible at trial eg id @ 180 106 Sct. @ 489.

The 3rd Circuit of Appeals has held that "an improper outright denial of the 6th Amendment right to counsel constitutes "cause [for a procedural default]"

Fishelli v Johnson 384 F3d 140, 154 3rd Cir 2004 4th Amendment.

In *Mitchell v Mason* 325 F3d 732 defense counsel's absence during a critical stage of trial [taking of evidence in defendant's guilt] denies defendant the right to a fair trial and was not

subject to harmless error inquiry, this was done in dependents proceedings.

In 2003 Judge Alito said states are free to adopt whatever evidence gathering rules they wish so long as they [do not] violate federal constitution. see *Williams v Price* 343 F3d 222.

In *Simmons v Beard* 356 F. Supp 2d 548 (2005) it says "whenever the prosecutor knowingly arranges or [permits] intrusion into the attorney-client relationship the right to counsel is sufficiently endangered to require a reversal."

The state of Delaware believes as does our federal government that the 6th Amendment right to counsel is very important. Under 11 3511 Videotaped depositions [and] procedures for child witnesses it addresses or should we say orders the notice and attendance of defendant and/or his attorney to secure truthfulness and accuracy and non coercion of alleged victim. This confrontation is to secure our 6th Amendment right to counsel and our 4th and 5th Amendment right to due process. In the case at hand neither defendant or his attorney were present and this shows not only a violation of Delaware law but also

a federal Constitutional violation that so infected the trial with unreliability that the truthfulness was at question. Yes we admit the judge did have a voir dire but did [not] look at said video prior to addressing Caeeon and truthfulness and assumed that it didn't exist. Upon rendering this video to the jury at trial and not notifying or showing defense prior to trial that this existed violates the Brady law and prohibited defendant from gathering witnesses to defend himself again violating his due process rights. (including as exhibit (A) Delaware 3511 Videotaped deposition and procedures for child witnesses.)

In acceptance of these Constitutional violations and Delaware's own laws we ask for reversal and recusal of video and reprimand.

We also address the issue of not notifying defense or allowing defense to see said video before it was presented at trial. 3rd Circuit requires that the opponent be notified about the evidence and the use of the ~~rebuttal~~ residual exception.

see U.S. v Pellullo 964 F2d 193

Also in *Kirk v Raymond Ind. Inc.*
3rd Circuit says sufficient notice to make
available to acquire witnesses for the
defense is required. (see 61F3d 147.)

11 § 3510

CRIMES AND CRIMINAL PROCEDURE

11 § 3511

evidence limited specifically to the rebuttal of such evidence introduced by the prosecutor or given by the complaining witness.

(d) Nothing in this section shall be construed to make inadmissible any evidence offered to attack the credibility of the complaining witness as provided in § 3508 of this title.

(e) As used in this section, "complaining witness" shall mean the alleged victim of the crime charged, the prosecution of which is subject to this section. (60 Del. Laws, c. 257, § 1; 66 Del. Laws, c. 269, § 6.)

§ 3510. Admissibility of certificate of title in criminal proceedings involving motor vehicles.

In any criminal proceeding in which ownership, possession or use of a motor vehicle is an issue, a certified copy of the certificate of title on file with the Division of Motor Vehicles shall be admissible as proof of ownership of the motor vehicle. (64 Del. Laws, c. 276, § 1.)

§ 3511. Videotaped deposition and procedures for child witnesses.

(a) In any criminal case or hearing on delinquency, upon motion of the Deputy Attorney General prior to trial and with notice to the defense, the court may order all questioning of any witnesses under the age of 12 years to be videotaped in a location designated by the court. Persons present during the videotaping shall include the witness, the Deputy Attorney General, the defendant's attorney and any person whose presence would contribute to the welfare and well-being of the witness, and if the court permits, the person necessary for operating the equipment. Only the attorneys or a defendant acting pro se may question the child. The court shall permit the defendant to observe and hear the videotaping of the witness in person or, upon motion by the State, the court may exclude the defendant providing the defendant is able to observe and hear the witness and communicate with the defense attorney. The court shall ensure that:

(1) The recording is both visual and oral and is recorded on film or videotape or by other electronic means;

(2) The recording equipment was capable of making an accurate recording, the operator was competent to operate such equipment and the recording is accurate and is not altered;

(3) Each voice on the recording is identified;

(4) Each party is afforded an opportunity to view the recording before it is shown in the courtroom.

(b) If the court orders testimony of a witness taken under this section, the witness may not be compelled to testify in court at the trial or upon any hearing for which the testimony was taken. At the trial or upon any hearing, a part or all of the videotaped deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence. If only a part of a deposition is offered in evidence by a party, an adverse party may require the party to offer all of it which is relevant to the part offered and any party may offer other parts. Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition.

Exhibit A

11 § 3512

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Certificate of Service

I, MANUEL NIEVES, hereby certify that I have served a true
And correct cop(ies) of the attached: HABEAS CORPUS PETITION
_____ upon the following
parties/person (s):

TO: DEPUTY ATTORNEY GENERAL
8th. Floor
Carvel State Office Building
820 N. French Street
Wilmington, DE., 19801

TO: DISTRICT COURT OF DELAWARE
844 KING Street
Lockbox 18
Wilmington, Delaware 19801

TO: _____

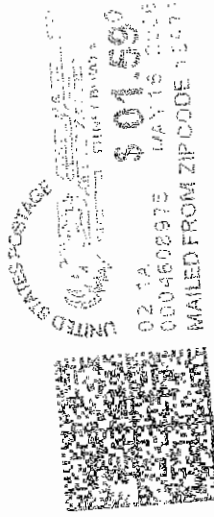
TO: _____

BY PLACING SAME IN A SEALED ENVELOPE, and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this 15 day of MAY, 2006

Manuel Nieves

IM Manuel Nieves
SBI# 468723 UNIT ED-35
DELAWARE CORRECTIONAL CENTER
1181 PADDOCK ROAD
SMYRNA, DELAWARE 19977



District Court of Delaware
844 King street
Lock Box 18
Wilmington, Delaware
19801

Legal work

Legal work